

Exhibit 1

From: [Colangelo, Matthew](#)
To: [Oestericher, Jeffrey \(USANYS\)](#); [Rovner, Allison \(USANYS\)](#); [Yu, Li \(USANYS\)](#); [Freedman, John A.](#); [Dale Ho \(dho@aclu.org\)](#); [SBrannon@aclu.org](#); [PGrossman@nyclu.org](#); [Goldstein, Elena](#); [Kaye, Fiona](#); [Fajana, Morenike](#)
Subject: RE: NY v. Trump / NYIC v. Trump
Date: Tuesday, August 4, 2020 1:13:01 PM

Thanks, Jeff – We anticipate that Mr. Thompson’s declaration will address the operations of the decennial census and the effect of the Presidential Memorandum on response rates. Mr. Thompson’s declaration will not rely on confidential, non-public, or privileged data he learned of during his tenure at the Census Bureau.
Matthew

From: Oestericher, Jeffrey (USANYS) <Jeffrey.Oestericher@usdoj.gov>
Sent: Tuesday, August 4, 2020 11:42 AM
To: Colangelo, Matthew <Matthew.Colangelo@ag.ny.gov>; Rovner, Allison (USANYS) <Allison.Rovner@usdoj.gov>; Yu, Li (USANYS) <Li.Yu@usdoj.gov>; Freedman, John A. <John.Freedman@arnoldporter.com>; Dale Ho (dho@aclu.org) <dho@aclu.org>; SBrannon@aclu.org; PGrossman@nyclu.org; Goldstein, Elena <Elena.Goldstein@ag.ny.gov>; Kaye, Fiona <Fiona.Kaye@ag.ny.gov>; Fajana, Morenike <Morenike.Fajana@ag.ny.gov>
Subject: RE: NY v. Trump / NYIC v. Trump

[EXTERNAL]

Matthew,

Thanks for your email. We will obviously have to consult with the Census Bureau with respect to your request. That said, it would be helpful to have a better understanding of the subject matters that Mr. Thompson intends to address in his declaration. Are you able to provide that information?

Jeff

Jeffrey Oestericher
Chief, Civil Division
U.S. Attorney’s Office, SDNY
86 Chambers Street, 3rd Floor
New York, NY 10007
(212) 637-2695

From: Colangelo, Matthew <Matthew.Colangelo@ag.ny.gov>
Sent: Tuesday, August 04, 2020 11:27 AM
To: Oestericher, Jeffrey (USANYS) <JOestericher@usa.doj.gov>; Rovner, Allison (USANYS) <ARovner@usa.doj.gov>; Yu, Li (USANYS) <LYu@usa.doj.gov>; Freedman, John A. <John.Freedman@arnoldporter.com>; Dale Ho (dho@aclu.org) <dho@aclu.org>; SBrannon@aclu.org; PGrossman@nyclu.org; Goldstein, Elena <Elena.Goldstein@ag.ny.gov>; Kaye, Fiona <Fiona.Kaye@ag.ny.gov>; Fajana, Morenike <Morenike.Fajana@ag.ny.gov>

Subject: NY v. Trump / NYIC v. Trump

Counsel,

Plaintiffs in 20-CV-5770 and 20-CV-5781 anticipate that in connection with their forthcoming motion for preliminary injunction, they may present a declaration from former Director of the Census Bureau John H. Thompson. We request your assurance that, as your clients agreed in prior litigation, the defendants will not seek to preclude Mr. Thompson's testimony by reliance on the Commerce Department's Touhy regulations at 15 C.F.R. Part 15, subpart B. Please let us know today if you will agree with this request. If any disagreement needs to be presented to the Court for resolution, we would like to advise the Court by letter this afternoon so the parties can discuss it at tomorrow's initial pretrial conference.

As a former employee of the Commerce Department, Mr. Thompson is purportedly subject to the Department's regulatory prohibition on providing expert testimony in this matter. *See* 15 C.F.R. 15.18(a); *see also* 15 C.F.R. 15.12(f). Those regulations are invalid and unenforceable in these circumstances. *NRDC v. Zinke*, 1:05-cv-01207-LJO-EPG, 2018 WL 1899609, at *5-10 (E.D. Cal. Apr. 20, 2018) ("[T]he Court overrules the objection that the deposition should not proceed because USDOC regulations prohibit employees from testifying as an expert or opinion witness for any other party other than the United States in legal proceedings in which the United States is a party.") (magistrate's order), *aff'd*, 2018 WL 2382798 (E.D. Cal. May 25, 2018); *see also Koopmann v. U.S. Dep't of Transportation*, 335 F. Supp. 3d 556, 558 (S.D.N.Y. 2018) (Furman, J.) ("USDOT's Touhy regulations are unlawful to the extent that they apply to former employees.").

In 2018, in the citizenship question litigation before Judge Furman, the defendants agreed not to oppose expert testimony from Mr. Thompson and another former employee, Dr. Hermann Habermann, so long as their testimony complied with 13 U.S.C. 9 and 18 U.S.C. 207. The parties' prior correspondence is attached to the extent it assists in your consideration of our request. Any declaration Mr. Thompson presents in this matter will comply with 13 U.S.C. 9 and 18 U.S.C. 207.

Please let us know this afternoon if you will agree with this request so we may seek appropriate relief from the Court if necessary.

Thank you,
Matthew

Matthew Colangelo
Chief Counsel for Federal Initiatives
New York State Office of the Attorney General
28 Liberty Street, 19th Floor | New York, NY 10005
Tel: (212) 416-6057 | matthew.colangelo@ag.ny.gov

IMPORTANT NOTICE: This e-mail, including any attachments, may be confidential,

privileged or otherwise legally protected. It is intended only for the addressee. If you received this e-mail in error or from someone who was not authorized to send it to you, do not disseminate, copy or otherwise use this e-mail or its attachments. Please notify the sender immediately by reply e-mail and delete the e-mail from your system.